

§ 26.2611-1 Generation-skipping transfer defined.

A generation-skipping transfer (GST) is an event that is either a direct skip, a taxable distribution, or a taxable termination. See § 26.2612-1 for the definition of these terms. The determination as to whether an event is a GST is made by reference to the most recent transfer subject to the estate or gift tax. See § 26.2652-1(a)(2) for determining whether a transfer is subject to Federal estate or gift tax.

§ 26.2612-1 Definitions.

(a) *Direct skip*—(1) *In general.* A direct skip is a transfer to a skip person that is subject to Federal estate or gift tax. If property is transferred to a trust, the transfer is a direct skip only if the trust is a skip person. Only one direct skip occurs when a single transfer of property skips two or more generations. See paragraph (d) of this section for the definition of skip person. See § 26.2652-1(b) for the definition of trust. See § 26.2632-1(c)(4) for the time that a direct skip occurs if the transferred property is subject to an estate tax inclusion period.

(2) *Special rule for certain lineal descendants*—(i) *In general.* Solely for the purpose of determining whether a transfer to or for the benefit of a lineal descendant of the transferor, the transferor's spouse, or a former spouse of the transferor is a direct skip, the generation assignment of the descendant is determined by disregarding the generation of a predeceased individual who was both an ancestor of the descendant and a lineal descendant of the transferor, the transferor's spouse, or a former spouse of the transferor (a predeceased child). If a transfer to a trust would be a direct skip but for this paragraph, any generation assignment determined under this paragraph continues to apply in determining whether any subsequent distribution from (or termination of an interest in) the portion of the trust attributable to that transfer is a GST. A living descendant who dies no later than 90 days after the subject transfer is treated as having predeceased the transferor to the extent that either the governing instrument or applicable local law provides that such individual shall be treated as

predeceasing the transferor. Except as provided in this paragraph (a)(2), a living descendant is not treated as a predeceased child solely by reason of applicable local law; e.g., an individual is not treated as a predeceased child solely because state law treats an individual executing a disclaimer as having predeceased the transferor of the disclaimed property. See § 26.2652-1(a)(1) for the definition of *transferor*. See paragraph (e) of this section for the definition of *interest in trust*.

(ii) *Special rule.* If a transferor makes an addition to an existing trust after the death of an individual described in paragraph (a)(2)(i) of this section (so that the lineal descendant would be assigned to a higher generation by reason of that death), the additional property is treated as being held in a separate trust for purposes of chapter 13 and the provisions of § 26.2654-1(a)(2) apply as if the portions of the single trust had separate transferors. Subsequent additions are treated as additions to the appropriate portion of the single trust.

(b) *Taxable termination*—(1) *In general.* Except as otherwise provided in this paragraph (b), a taxable termination is a termination (occurring for any reason) of an interest in trust unless—

(i) A transfer subject to Federal estate or gift tax occurs with respect to the property held in the trust at the time of the termination;

(ii) Immediately after the termination, a person who is not a skip person has an interest in the trust; or

(iii) At no time after the termination may a distribution, other than a distribution the probability of which occurring is so remote as to be negligible (including a distribution at the termination of the trust) be made from the trust to a skip person. For this purpose, the probability that a distribution will occur is so remote as to be negligible only if it can be ascertained by actuarial standards that there is less than a 5 percent probability that the distribution will occur.

(2) *Partial termination.* If a distribution of a portion of trust property is made to a skip person by reason of a termination occurring on the death of a lineal descendant of the transferor,